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APPLICATION NO.	F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/920,806		08/03/2001	Laurent Lecourt	S 5435	7152	
466	7590	05/20/2003				
	YOUNG & THOMPSON				EXAMINER	
745 SOUTH ARLINGTO		TREET 2ND FLOOI 22202	₹	MENDOZA, MICHAEL G		
				ART UNIT	PAPER NUMBER	
				3761	U	
				DATE MAILED: 05/20/2003		

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)				
		09/920,806	LECOURT ET AL.				
	Office Action Summary	Examiner					
X-			Art Unit				
-	The MAILING DATE of this communication app	Michael G. Mendoza	he correspondence address				
Period fo	or Reply	•	coco				
THE I - Exter after - If the - If NO - Failu - Any r	ORTENED STATUTORY PERIOD FOR REPL MAILING DATE OF THIS COMMUNICATION. Insions of time may be available under the provisions of 37 CFR 1.1 SIX (6) MONTHS from the mailing date of this communication. Period for reply specified above is less than thirty (30) days, a reply period for reply is specified above, the maximum statutory period re to reply within the set or extended period for reply will, by statute eply received by the Office later than three months after the mailing and patent term adjustment. See 37 CFR 1.704(b).	136(a). In no event, however, may a reply ly within the statutory minimum of thirty (30 will apply and will expire SIX (6) MONTHS a, cause the application to become ABAND	be timely filed)) days will be considered timely. from the mailing date of this communication. ONED (35 U.S.C. § 133).				
1)🖂	Responsive to communication(s) filed on <u>03</u>	<u> August 2001</u> .					
2a)□	This action is FINAL . 2b)⊠ Th	nis action is non-final.					
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213. Disposition of Claims							
4)⊠	Claim(s) $\underline{1-15}$ is/are pending in the application	١.					
	4a) Of the above claim(s) is/are withdrawn from consideration.						
5)	5) Claim(s) is/are allowed.						
6)⊠	6)⊠ Claim(s) <u>1-15</u> is/are rejected.						
7)	Claim(s) is/are objected to.						
	Claim(s) are subject to restriction and/o on Papers	r election requirement.					
	Γhe specification is objected to by the Examine	r.					
	The drawing(s) filed on is/are: a)☐ accept		Examiner.				
	Applicant may not request that any objection to the	•					
11) 🔲 🗆	The proposed drawing correction filed on						
	If approved, corrected drawings are required in rep						
12) 🔲 🛭	The oath or declaration is objected to by the Ex	aminer.					
Priority u	nder 35 U.S.C. §§ 119 and 120						
13)⊠	Acknowledgment is made of a claim for foreign	priority under 35 U.S.C. § 11	9(a)-(d) or (f).				
a)[2	a)⊠ All b)□ Some * c)□ None of:						
	1. Certified copies of the priority documents	s have been received.					
	2. Certified copies of the priority documents	s have been received in Applie	cation No				
	Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.						
	cknowledgment is made of a claim for domesti	-					
a)	☐ The translation of the foreign language pro	visional application has been	received.				
Attachment	cknowledgment is made of a claim for domesti	ic priority under 35 U.S.C. §§	120 and/or 121.				
1) Notice	e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-948) nation Disclosure Statement(s) (PTO-1449) Paper No(s) 2	5) Notice of Inform	mary (PTO-413) Paper No(s) nal Patent Application (PTO-152)				
U.S. Patent and Tra PTO-326 (Rev		tion Summary	Part of Paper No. 4				

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DETAILED ACTION

Claim Rejections - 35 USC § 112

- 1. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
- 2. Regarding claim 11, the phrase "like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 4. Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Vaghefi 5875776.
- 5. Vaghefi teaches use and an inhalable medicament formed by a combination of at least one gas in combination with at least one active product for manufacturing an inhalable medicament or part of an inhalable medicament intended for the treatment or prevention of pain in humans or animals, in which the active product is chosen from among analgesics, in which the active product is chosen from among compounds with an anti-inflammatory action (ibuprofen), in which the active product is chosen from among antipyretics (col. 10, lines 63-67 and col. 11, lines 1-11), in which the gas is

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chosen from among helium, oxygen, nitrogen, xenon, hydrogen, carbon monoxide, carbon dioxide argon, krypton, nitrogen monoxide, nitrogen protoxide, carbonated hydrocarbons, fluorocarbons, and mixtures of several of these gases (col. 4, lines 59-65), in which the inhalable medicament is in the form of an aerosol comprising the gas and the active product in the form of a power, liquid or a powder/liquid mixture (col. 3, lines 43-53), it would be inherent that the inhalable medicament contains a therapeutically effective quantity of active product and the active product leads to a synergistic effect.

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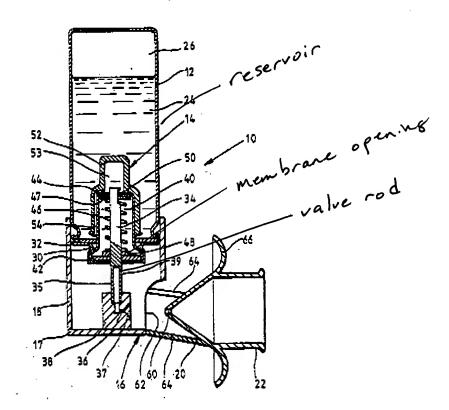
Claim Rejections - 35 USC § 103

- 6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vaghefi in view of Pritchard 5048729.
- 8. As to claim 15, Vaghefi teaches the device the aerosol according to claim 12. It should be noted that Vaghefi fails to teach a reservoir equipped with a reservoir opening, a membrane comprising a membrane opening, and a valve rod. Pritchard teaches a apparatus with common reservoir equipped with a reservoir opening, a membrane comprising a membrane opening, and a valve rod for use in an inhaler. Therefore it would have been obvious to one of ordinary skill in the art to use the reservoir equipped with a reservoir opening, a membrane comprising a membrane

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opening, and a valve rod of Pritchard dispensing a metered dose of an active therapeutic agent in a liquid (col. 1, lines 57-58).



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Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (703) 305-3285. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4520 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

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MM May 7, 2003

WEILUN LO

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